IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 15032 of 2007(M)

PETITIONER:

JAISHANKAR STEELS PVT LTD.,
NEAR INDUSTRIAL DEVELOPMENT AREA,
ERUMATHALA P.O. ALUVA-683 105, REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADV. SRI.PKM.HASSAN

RESPONDENTS:

1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

2. SPECIAL OFFICER(REVENUE),
KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

3. DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE, KERALA STATE ELECTRICITY BOARD, PERUMBAVOOR.

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) 15032/07

APPENDIX

PETITIONER'S EXTS:

Ext.P1 true copy of the HT agreement dated 18.1.2002.

Ext.P2 true copy of the letter dated 1.10.2002 addressed to the third respondent.

Ext.P2(a) true copy of the postal receipts.

Ext.P3 true copy of the fax message dated 30.8.2003 issued by the 2nd respondent to the petitioner.

Ext.P4 true copy of the representation dt. 30.8.2003 filed by the petitioner before the 2nd respondent.

Ext.P5 true copy of the interim order dated 4.9.2003 in W.P.(C) No.28942/2003.

Ext.P6 true copy of the judgment dated 19.9.2006 in W.P.(C) No.28942/2003.

Ext.P7 true copy of the letter dated 16.1.2007 issued by the 1st respondent to the petitioner.

Ext.P8 true copy of the certificate dated 18.1.2007.

Ext.P9 true copy of the letter dated 23.2.2007 issued by the 1st respondent.

Ext.P10 true copy of the order dated 18.4.2007 issued by the 1st respondent.

Ext.P11 true copy of the letter dt. 2.5.07 issued by the 2nd respondent.

Ext.P11(a) true copy of the statement of arrears.

Ext.P12 true copy of the Government order dt. 24.2.2007.

Antony Dominic, J.

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WPC.No.15032 of 2007

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Dated this the 29th day of May, 2007.

JUDGMENT

The issue raised in this Writ Petition relates to the claim of the petitioner for waiver of maximum demand charges for the period when the factory was under closure, in terms of Clause 14(b) of Ext.P1, the agreement entered into by the petitioner with the first respondent for the supply of High Tension Energy. On an earlier occasion, the petitioner had filed W.P.(C) No.28942 of 2003 and it was pursuant to Ext.P5 interim order therein, that on remittance of Rs.5 lakhs as stipulated therein, power supply was restored to the petitioner's premises on 6.9.2003. Thereafter, the Writ Petition was disposed of by Ext.P6 judgment directing the competent authority of the Board to take a decision on the issue in the light of Ext.P1 agreement.

2. From the pleadings, it is seen that during the course of hearing that was held in pursuance to Ext.P6 judgment, the petitioner was called upon to produce a certificate issued by the competent authority certifying that the factory was closed for machine break down and indicating the period of closure in order to consider request

for rebate of the maximum demand charges. It was accordingly that Ext.P8 certificate issued by the Asst. Labour Officer, Aluva was produced. On conclusion of the enquiry, Ext.P10 order was issued rejecting the claim of the petitioner stating inter alia that the certificate produced was not complete in the sense that it did not mention the exact period during which the factory was under shut down and the date on which the machinery was got repaired and put into operation. Following Ext.P10, when demand was raised on the petitioner by Ext.P11, this Writ Petition was filed.

2. Petitioner has along with I.A.No.6459 of 2007 produced Ext.P13, a certificate issued by the District Industries Centre certifying that the factory was under shut down from 1.10.2002 to 25.8.2003 and that the unit is now working satisfactorily. Producing Ext.P13 before the first respondent, the petitioner filed Ext.P14 representation seeking review of Ext.P10 order.

3. At the time of admission, this Court had passed an order on 15.5.2007 granting stay of Ext.P11 on condition that the petitioner remits 50% of the amount demanded therein. It was subsequently that the petitioner filed I.A.No.6459 of 2007 seeking modification of the condition imposed by this Court, producing Exts.P13 and P14. When the petition for modification was taken up for consideration,

counsel for the petitioner and the respondents agreed that the matter can be disposed of finally and accordingly, the Writ Petition itself was heard and is disposed of.

4. It is evident that the claim of the petitioner was turned down by Ext.P10 on the ground that the certificate, Ext.P8, is incomplete for want of details regarding the exact period during which the factory was under shut down and the date on which the machinery was got repaired and put into operation. It is pointed out by the learned counsel for the petitioner that the date of shut down has been accepted as 1.10.2002 and as supply was restored on 6.9.2003 pursuant to Ext.P5 order of this Court, the reasoning given in Ext.P10 for rejecting the certificate produced by the petitioner and denying the benefit of waiver of maximum demand charges is baseless. Be that as it may, now that the petitioner has produced Ext.P13, which if as contended by the petitioner, satisfies the requirements, there should be no impediment in the way of the respondents for granting the benefit sought for by the petitioner. In view of the facts stated above, it is only appropriate that the respondents should consider the matter afresh taking into account Ext.P13 certificate produced by the petitioner.

5. Accordingly, quashing Exts. P10 and P11, I dispose of this

Writ Petition directing the first respondent to reconsider the petitioner's claim for waiver of maximum demand charges for the period of closure taking into account Exts. P8 and P13 certificates produced by the petitioner. It is directed that the decision to be taken as above, shall be with notice to the petitioner and within a period of two months from the date of receipt of a copy of this judgment.

Antony Dominic,
Judge.

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